

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Linda Weil,

Plaintiff

V.

Walmart Inc.,

Defendant

Case No.: 2:21-cv-01631-JAD-EJY

**Order Granting Motion to Withdraw
Admissions, Denying Motions for
Summary Judgment, and Denying Motion
for Fees and Costs**

[ECF Nos. 13, 22, 23, 34]

8 In this slip-and-fall lawsuit, plaintiff Linda Weil moves for summary judgment, relying
9 on defendant Walmart Inc.’s failure to timely respond to requests for admission that effectively
10 admit liability. Walmart responds with a motion to withdraw the now-deemed admissions, a
11 second motion seeking fees and costs for what it claims is Weil’s bad-faith attempt to win on a
12 technicality, and a third motion for summary judgment in its favor. Because doing so will
13 promote presentation of the case on its merits and result in no legal prejudice to Weil—the two
14 mandatory considerations under the rule that deals with deemed admissions—and because
15 Walmart shows good cause for its delayed responses, I grant Walmart’s motion to withdraw the
16 admissions and thus deny Weil’s motion for summary judgment based on those admissions. I
17 also deny Walmart’s other motions because it has not shown that Weil brought her motion in bad
18 faith and because its summary-judgment motion is not supportable by Nevada law.

Background

20 Weil alleges that she slipped in the produce aisle of a Walmart store and suffered
21 injuries.¹ Though Weil testified that she did not know what she was slipping on as she fell,²

23||¹ ECF No. 34-1.

² ECF No. 34-2 at 38.

1 photographs taken shortly after the fall show Weil lying next to what appears to be a smashed,
 2 wet, green grape,³ and another customer at the store that day testified that she saw a “smashed
 3 grape” on the floor near Weil.⁴ Though nobody can say how long the grape had been there prior
 4 to Weil’s fall,⁵ employees of Walmart at the time of the fall testified that they regularly saw
 5 produce on the ground of the produce section and that they were tasked with regularly
 6 monitoring the store and keeping it clean.⁶

7 Weil timely served written discovery requests, including requests for admission, on
 8 Walmart on October 7, 2021.⁷ Around that time, Walmart’s counsel’s office faced an increasing
 9 COVID count, which prompted Walmart’s counsel to reassign this case to another attorney,
 10 change how it processed mail, and have some employees work from home.⁸ These
 11 circumstances contributed to counsel’s failure to notice the mailed requests until
 12 January 7, 2022.⁹ Walmart’s counsel served late responses on January 14, 2022.¹⁰ Both parties’
 13 counsel conferred about Walmart’s tardiness, and Weil’s counsel refused to accept the late
 14

15 ³ ECF No. 42-6.

16 ⁴ ECF No. 34-3 at 15–16.

17 ⁵ ECF No. 34-2 at 38; ECF No. 34-3 at 16.

18 ⁶ ECF No. 42-4 at 28–29, 31; ECF No. 42-8 at 23–25; ECF No. 42-9 at 45–47.

19 ⁷ ECF No. 14-1 at 1–5. Walmart theorizes that these requests may have been served improperly
 initially and only later properly. ECF No. 21 at 6–7. But Walmart previously indicated that it
 did not object to the initial service. ECF No. 16-4. Regardless, Walmart proceeds on the
 assumption that its responses were untimely, and so do I. ECF No. 40.

21 ⁸ ECF No. 21-2 at ¶ 7; ECF No. 21-3 at ¶ 36.

22 ⁹ ECF No. 21-2 at ¶ 7. Weil contends that Walmart must have known about the requests earlier
 than January 2022 because a November 2021 joint stipulation states that Weil served discovery
 requests. ECF No. 30 at 8–9; ECF No. 12 at 2. But I accept Walmart’s counsel’s sworn
 representation that it did not notice the requests until early January.

23 ¹⁰ ECF No. 21-8.

1 responses or stipulate to a retroactive extension of the deadline.¹¹ Walmart claims that counsel
 2 for both parties scheduled a meet and confer to discuss the issue but that Weil's counsel
 3 backtracked and filed Weil's motion for summary judgment days before the planned meeting.¹²

4 **Discussion**

5 **I. The court denies Weil's summary-judgment motion because it grants Walmart's
 6 motion to withdraw the admissions on which Weil's summary-judgment argument
 7 is based.**

8 Weil moves for summary judgment, contending that Walmart's failure to timely respond
 9 to her requests for admission renders the matters addressed in those requests admitted and that
 10 those admissions concede the crucial elements of Weil's negligence claim.¹³ In response,
 11 Walmart moves to withdraw the admissions.¹⁴ Federal Rule of Civil Procedure 36 provides that
 12 matters addressed in requests for admission are admitted and "conclusively established" unless
 13 the responding party serves an answer or objection within 30 days or "the court, on motion,
 14 permits the admission to be withdrawn or amended."¹⁵ A party may be permitted to withdraw its
 15 admissions only if (1) withdrawal "would promote the presentation of the merits of the action"
 16 and (2) "the party who obtained the admission fails to satisfy the court that withdrawal . . . will
 17 prejudice that party in maintaining or defending the action on the merits."¹⁶ The district court
 18 must consider these two prongs—presentation of the merits and prejudice—and should do so in
 19

20¹¹ ECF No. 16-3.

21¹² ECF No. 23-9.

22¹³ ECF No. 13 at 11–13.

23¹⁴ ECF No. 23.

¹⁵ Fed. R. Civ. P. 36(a)(3), (b).

¹⁶ *Conlon v. United States*, 474 F.3d 616, 621 (9th Cir. 2007); see Fed. R. Civ. P. 36.

1 view of the two goals that the rule serves: truth-seeking and efficiency.¹⁷ The merits prong is
 2 satisfied if “upholding the admissions would practically eliminate any presentation of the merits
 3 of the case.”¹⁸ And a party opposing withdrawal may show prejudice by demonstrating “the
 4 unavailability of key witnesses” or “the sudden need to obtain evidence with respect to questions
 5 previously admitted.”¹⁹ The fact that “the party who obtained the admission will now have to
 6 convince the factfinder of its truth” does not suffice.²⁰ The focus is on the prejudice that the
 7 “party would suffer at trial[,]” and prejudice is more likely when the motion to withdraw comes
 8 during trial.²¹ Even if both prongs are satisfied, whether to permit withdrawal is “permissive, not
 9 mandatory” and rests within a district court’s discretion.²² In exercising that discretion, the court
 10 “may consider other factors, including whether the moving party can show good cause for the
 11 delay and whether the moving party appears to have a strong case on the merits.”²³

12 The Ninth Circuit cases of *Conlon v. United States* and *Hadley v. United States* illustrate
 13 the application of these principles. The magistrate judge denied Conlon’s motion to withdraw
 14 deemed admissions in a Federal Tort Claims Act case, reasoning that the government twice
 15 advised Conlon of the consequences of his delay and that withdrawal of the admissions would
 16 severely prejudice the defendants because the government’s summary-judgment motion was
 17 pending and trial started in eight days.²⁴ Conlon also failed to seek an extension, sought relief

18
 19¹⁷ *Conlon*, 474 F.3d at 621.

20¹⁸ *Id.* (quoting *Hadley v. United States*, 45 F.3d 1345, 1348 (9th Cir. 1995)).

21¹⁹ *Id.*

22²⁰ *Id.* (cleaned up).

23²¹ *Hadley*, 45 F.3d at 1348.

24²² *Conlon*, 474 F.3d at 621.

25²³ *Id.*

26²⁴ *Id.* at 620–21.

1 only after the government moved for summary judgment, and failed to cite a medical or other
 2 emergency to explain his delay.²⁵ The district court then granted the government's summary-
 3 judgment motion based on those admissions.²⁶

4 The Ninth Circuit affirmed.²⁷ It first explained that the issue of prejudice was a “close
 5 question,” because relying on a deemed admission for a summary-judgment motion “does not
 6 constitute prejudice” and it was “reluctant to conclude that a lack of discovery” prejudiced the
 7 government because the district court could have reopened discovery and because “prejudice
 8 must relate to the difficulty a party may face in proving its case at trial.”²⁸ Still, the panel held
 9 that the magistrate judge did not clearly err in finding that the government would face prejudice:
 10 “the government relied on the admissions for [] two and a half months, through discovery and
 11 dispositive[-]motion” deadlines “with no indication that Conlon” would seek to withdraw his
 12 admissions,²⁹ and “the government relied heavily on the admissions, which essentially conceded
 13 the case” and so “conducted none of the discovery it otherwise needed to prove its case at trial,”
 14 which was just eight days away.³⁰ Even if the government faced no prejudice, the panel held, the
 15 district court did not abuse its discretion in denying Conlon’s motion for lack of good cause.³¹
 16 Conlon faced no medical issue or other emergency, the requests were served “well within the
 17
 18
 19

²⁵ *Id.*

²⁶ *Id.* at 621.

²⁷ *Id.* at 618.

²⁸ *Id.* at 624.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

1 allotted discovery period,” and Conlon “had fair warning of the consequences of his
 2 noncompliance.”³² So the panel upheld the denial of Conlon’s motion to withdraw.³³

3 By contrast, in *Hadley v. United States*, the Ninth Circuit panel held that the district court
 4 abused its discretion in denying a motion to withdraw in a tax case. The panel found that the
 5 merits prong was easily satisfied because “withdrawal of the admissions would . . . facilitate a
 6 presentation of the merits of Hadley’s case.”³⁴ And the panel “fail[ed] to see how the
 7 government’s case would have been prejudiced by a withdrawal.”³⁵ The government would have
 8 faced mere inconvenience by foregoing additional discovery it would have pursued if the
 9 responses were timely, and the government had other evidence it could have used—but chose not
 10 to use—to corroborate the admissions.³⁶

11

12 **A. Permitting Walmart to withdraw the admissions will promote presentation**
of this case on its merits without prejudicing the plaintiff.

13 Applying these lessons here, I find that both prongs of Rule 36’s test are satisfied. Weil
 14 concedes that withdrawal would promote presentation of the merits³⁷—indeed, the admissions go
 15 to the heart of Weil’s claim for negligence.³⁸ And Weil fails to satisfy her burden of showing
 16 that she would face the kind of prejudice required under Rule 36. Weil’s chief complaint is that

17

18 ³² *Id.* at 624–25.

19 ³³ *Id.* at 625.

20 ³⁴ *Hadley*, 45 F.3d at 1348.

21 ³⁵ *Id.* at 1349.

22 ³⁶ *Id.*

23 ³⁷ ECF No. 30 at 14.

³⁸ See ECF No. 14-1 (requesting admissions that, for example, Weil suffered injuries, Walmart
 knew the grape was on the floor, Walmart had no skid mats, and Walmart did not remove the
 grape).

1 she “relied on the deemed admissions for nearly four [] months during the discovery period” and
 2 chose “not to pursue certain depositions and discovery.”³⁹ But Weil does not identify what other
 3 depositions or discovery she would have pursued without the admissions and instead merely
 4 recites that there are “key witnesses” that she may have deposed and that “experts will now be
 5 forced” to render opinions “without deposition testimony and discovery.”⁴⁰ The *Conlon* panel all
 6 but rejected the proposition that a lack of discovery alone constitutes prejudice, especially if a
 7 court can reopen discovery,⁴¹ and Walmart moved to withdraw the admissions before the (now-
 8 expired) May 30, 2022, discovery deadline.⁴² And, as the *Conlon* court held, reliance on
 9 admissions in moving for summary judgment does not constitute prejudice.⁴³ Weil’s other
 10 contentions that she is 68 years old and that she couldn’t take depositions for some time because
 11 the COVID count in Walmart’s counsel’s office was high⁴⁴ don’t support a prejudice finding
 12 here either.

13 Compared to the *Conlon* circumstances, which presented a “close question” on the
 14 prejudice prong, these facts fall fatally short.⁴⁵ Like the government in *Conlon*, Weil arguably
 15
 16

³⁹ ECF No. 30 at 14–15.

⁴⁰ ECF No. 13 at 9.

⁴¹ *Conlon*, 474 F.3d at 624 (reasoning that, “[a]lthough the United States relied on the deemed admissions in choosing not to engage in any other discovery, we are reluctant to conclude that a lack of discovery, without more, constitutes prejudice”) (internal citation omitted).

⁴² ECF No. 33. *Cf. Saroyan Lumber Co. v. El & El Wood Prod. Corp.*, 126 F. App’x 371, 372 (9th Cir. 2005) (unpublished) (finding that the lower court did not abuse its discretion in upholding admissions because “Saroyan did not seek to withdraw the deemed admissions until the discovery cut-off had passed and defendants were unable to conduct discovery on the facts deemed admitted.”).

⁴³ *Conlon*, 474 F.3d at 624.

⁴⁴ ECF No. 30 at 14.

⁴⁵ See *Conlon*, 474 F.3d at 624.

1 relied on the admissions for two to three months (but not seven⁴⁶), the admissions “essentially
 2 concede[] the [] case,”⁴⁷ and Walmart failed to seek relief from this court until after Weil moved
 3 for summary judgment. But that’s where the similarities with *Conlon* end. Contrary to Weil’s
 4 contention that Walmart “gave no indication throughout [the discovery] period that it would seek
 5 permission to withdraw the[] admissions,”⁴⁸ Walmart served (late) responses, asked Weil to
 6 stipulate to a retroactive extension, and sought to confer with Weil ahead of involving this
 7 court—all signaling that it did not plan to stand by the admissions. Weil also did not rely on the
 8 admissions “through the discovery and dispositive[-]motion” deadlines, as these deadlines fell
 9 after Walmart moved to withdraw.⁴⁹ And the parties are not days away from trial; no trial date
 10 has yet been set.⁵⁰ So I find that Weil has not met her burden to show that she would suffer
 11 prejudice at trial if the admissions are withdrawn.

12

13

14

15 ⁴⁶ See *Sheppard v. Cnty. of Los Angeles*, 785 F. App’x 422, 423 (9th Cir. 2019) (unpublished)
 16 (affirming the denial of motion to withdraw admissions because the opposing party relied on the
 admissions for seven months and “would have been prejudiced at trial by having forgone
 discovery on the admitted matters”).

17 ⁴⁷ *Conlon*, 474 F.3d at 624.

18 ⁴⁸ ECF No. 30 at 14.

19 ⁴⁹ ECF No. 12 at 3. See *Conlon*, 474 F.3d at 624; see also *S.E.C. v. Glob. Express Cap. Real Est. Inv. Fund, I, LLC*, 289 F. App’x 183, 191 (9th Cir. 2008) (unpublished) (holding that the SEC
 20 could show prejudice because the opposing party filed her motion for withdrawal months after
 the SEC moved for summary judgment, after written discovery had closed, and near the time all
 21 discovery closed).

22 ⁵⁰ ECF No. 41; see also *999 v. C.I.T. Corp.*, 776 F.2d 866, 869 (9th Cir. 1985) (affirming denial
 23 of a request to withdraw because the party did not move for withdrawal “until the middle of the
 trial when [the opposing party] had nearly rested its case”; the opposing party “heavily relied on
 the admission”; and “it had been shown to the jury” without objection). Nor did Weil “ignore[]
 repeated reminders of the request[s].” *Seminiano v. Xyris Enter., Inc.*, 602 F. App’x 682, 683
 (9th Cir. 2015) (unpublished).

1 **B. Walmart has shown good cause for its delay.**

2 Walmart also can show good cause for its delay. Unlike the party with tardy responses in
 3 *Conlon*, Walmart faced a difficult pandemic-related situation that contributed to its delay.
 4 Walmart explains that the requests were inadvertently misplaced because the high COVID case
 5 count at its counsel's office resulted in some of its employees working from home, along with
 6 changes to mail procedures and staffing that affected the handling of this case.⁵¹ And once the
 7 error was discovered, Walmart's counsel acted diligently to correct it. So I find that Walmart's
 8 counsel has shown good cause for the delay in seeking withdrawal, justifying an exercise of my
 9 discretion.

10 The cases that Weil relies on to support its argument to the contrary fail to persuade me
 11 otherwise. In *Lewis v. Caesars Entertainment Corp.*, for example, the party seeking withdrawal
 12 failed to show that doing so would promote the presentation of the merits and had an illogical
 13 and unreasonable explanation for the delay.⁵² In the other cases that Weil cites, the parties
 14 seeking withdrawal caused multiple delays and flouted multiple deadlines,⁵³ did not show that
 15 withdrawing the admissions would promote the presentation of the merits,⁵⁴ or did not persuade
 16 the judge of its stated reason for the delay.⁵⁵ So I grant Walmart's motion to withdraw its

21 ⁵¹ ECF No. 23 at 8.

22 ⁵² *Lewis v. Caesars Ent. Corp.*, 2018 WL 2741041, at *3 (D. Nev. June 7, 2018).

23 ⁵³ *Hall v. Mt Terrace Aoao*, 2017 U.S. Dist. LEXIS 184360, at *7 (D. Haw. July 12, 2017).

24 ⁵⁴ *LHF Prods., Inc. v. Koehly*, 2017 WL 4767673, at *6 (D. Nev. Oct. 20, 2017).

25 ⁵⁵ *Morgan v. Bash*, 2020 WL 6582351, at *3 (D. Nev. Nov. 10, 2020).

1 deemed admissions. Because I do so, and because Weil’s motion for summary judgment is
 2 based entirely on the deemed admissions,⁵⁶ I deny that motion.⁵⁷

3 **II. Walmart shows no bad faith to support its fees-and-costs motion.**

4 Walmart requests that I grant it attorneys’ fees and costs under the court’s inherent
 5 powers, arguing that Weil’s summary-judgment motion was brought in bad faith.⁵⁸ It cites *Leon*
 6 *v. IDX Systems Corp.* for the proposition that the court may grant such an award if a party or
 7 counsel acts “in bad faith, vexatiously, wantonly[,] or for oppressive reasons.”⁵⁹ That case
 8 involved a party who spoliated evidence and has little relevance here.⁶⁰ Still, Walmart contends
 9 that Weil or her counsel acted in bad faith because (1) Walmart’s counsel regularly granted
 10 extensions to Weil’s counsel, whereas Weil’s counsel did not reciprocate that courtesy; (2)
 11 Weil’s counsel filed the motion without attempting to meet and confer and ahead of a planned
 12 conference to discuss the issue; and (3) Weil’s counsel is attempting to “win on [a] technicality”
 13 and is “steal[ing]” the court’s time with an “ill-timed and unsupported [m]otion.”⁶¹ Walmart
 14 also contends that not granting its motion will encourage other plaintiffs’ attorneys to resort to
 15 similar behavior.⁶²

16

17

18

⁵⁶ ECF No. 13 at 11–13.

⁵⁷ Because I deny Weil’s motion on this basis, I need not address Walmart’s alternative argument
 19 that, even considering the deemed admissions, summary judgment for Weil is not warranted.
 20 ECF No. 21 at 12–19.

⁵⁸ ECF No. 22 at 24.

⁵⁹ *Id.* (citing *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 961 (9th Cir. 2006) (quotation omitted)).

⁶⁰ *Leon*, 464 F.3d at 961.

⁶¹ ECF No. 22 at 24.

⁶² *Id.*

1 I find that the record does not support all of Walmart’s assertions and does not
 2 demonstrate the kind of bad faith that justifies a fees-and-costs award under the court’s inherent
 3 power. For starters, Weil puts forth evidence that she has cooperated with Walmart,⁶³ and the
 4 docket reflects multiple stipulations that the parties have mutually agreed to.⁶⁴ And it is unclear
 5 how Weil could have resolved this issue with Walmart other than to accede to its requested
 6 extension—something Weil had no obligation to do. Though it is preferable for parties to
 7 resolve discovery disputes themselves before involving the court, the record shows that the
 8 parties corresponded about this issue and were likely at an impasse.⁶⁵

9 Walmart also ignores that relying on deemed admissions to support a motion for
 10 summary judgment does not flout any rule and is commonplace in civil litigation.⁶⁶ To the
 11 extent that Walmart impugns this practice as some type of gotcha strategy, it’s authorized by
 12 Rule 36. As I explained in *Lewis*, “[e]very civil practitioner knows that a set of requests for
 13 admissions is a grenade with its pin pulled: the failure to serve timely denials can blow up a
 14 case.”⁶⁷ Luckily for Walmart, Rule 36 also has an escape hatch. Though Weil’s counsel’s filing
 15 of the summary-judgment motion ahead of a planned meet-and-confer to discuss the issue is
 16 perhaps poor form, it’s not the kind of bad faith that would justify discovery sanctions.

17
 18
 19
 20 ⁶³ See, e.g., ECF No. 29-1.

21 ⁶⁴ See, e.g., ECF No. 11; ECF No. 32; ECF No. 39.

22 ⁶⁵ ECF No. 16-3.

23 ⁶⁶ See *Conlon*, 474 F.3d at 618 (affirming grant of summary-judgment motion that relied on
 deemed admissions).

⁶⁷ *Lewis*, 2018 WL 2741041 at *3.

1 **III. Walmart's summary-judgment motion is not supported by the record or Nevada**
 2 **law.**

3 Walmart also brings its own motion for summary judgment on Weil's sole claim for
 4 negligence.⁶⁸ Walmart contends that Weil's and the bystander-customer's deposition testimony
 5 demonstrates a lack of evidence that Weil slipped on the grape because neither can definitively
 6 say what Weil slipped on.⁶⁹ But a reasonable jury could infer that the grape was the likely
 7 culprit based on the circumstantial evidence that Weil presents:⁷⁰ testimony and photographic
 8 evidence that there was a smashed, wet grape right next to Weil after she slipped.⁷¹

9 Walmart also contends that Weil's and the bystander-customer's testimony cannot
 10 establish that Walmart caused or had notice of the grape.⁷² This is true—their testimony doesn't
 11 establish notice. But this argument ignores the deposition testimony of Walmart's employees
 12 that they regularly saw produce on the store's floor and were tasked with monitoring the store for
 13 such hazards⁷³ and the Nevada Supreme Court's seminal smashed-grape slip-and-fall decision in
 14 *Sprague v. Lucky Stores, Inc.*⁷⁴ Like here, a customer "slipped and fell in the produce section" of
 15 a grocery store and "sustain[ed] serious personal injuries";⁷⁵ a smashed grape was found next to
 16 the customer;⁷⁶ employees frequently found stray produce on the Lucky's store floor due to

17 _____
 68 ECF No. 34 at 11–12.

69 *Id.* at 11.

70 *Allison v. Merck & Co.*, 878 P.2d 948, 953 n.5 (Nev. 1994); *Frantz v. Johnson*, 999 P.2d 351, 359 (Nev. 2000).

71 ECF No. 42-6; ECF No. 34-3 at 15–16.

72 ECF No. 34 at 11.

73 See ECF No. 42-4 at 28–29, 31; ECF No. 42-8 at 23–25; ECF No. 42-9 at 45–47.

74 *Sprague v. Lucky Stores, Inc.*, 849 P.2d 320 (Nev. 1993).

75 *Id.* at 322.

76 *Id.*

1 customers digging through produce;⁷⁷ and employees were advised to search for fallen produce
2 and clean often.⁷⁸ On that evidence, the *Sprague* court reversed the lower court's grant of
3 summary judgment, concluding that a reasonable jury could find that the "virtually continual
4 debris on the produce department floor put [the grocer] on constructive notice that, at any time, a
5 hazardous condition might exist" that could injure customers.⁷⁹ Walmart makes no effort to—
6 and cannot—meaningfully distinguish *Sprague*, and I find that genuine issues of fact preclude
7 judgment in Walmart's favor as a matter of law, so I deny its motion for summary judgment.

Conclusion

9 IT IS THEREFORE ORDERED that Weil's motion for partial summary judgment [ECF
10 No. 13] is DENIED.

11 IT IS FURTHER ORDERED that Walmart's motion for fees and costs [ECF No. 22] is
12 **DENIED.**

13 IT IS FURTHER ORDERED that Walmart's motion to withdraw deemed admissions
14 that were the subject of Weil's October 7, 2021, requests for admission [ECF No. 23] is
15 **GRANTED**. Walmart's January 14, 2022, responses are deemed the operable responses to those
16 requests. Should the plaintiff believe that additional discovery is necessitated in light of this
17 order, plaintiff must file a motion to reopen discovery (with the magistrate judge) by December

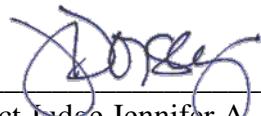
77 *Id.*

78 *Id.*

⁷⁹ *Id.* at 323. Although federal procedural law applies here, Nevada's summary-judgment standard mirrors the federal standard. *Compare* Nev. R. Civ. P. 56 ("The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."), *with* Fed. R. Civ. P. 56 ("The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.").

1 IT IS FURTHER ORDERED that Walmart's motion for summary judgment [ECF No.
2 **34**] is DENIED.

3 The parties must file their proposed joint pretrial order by January 31, 2023, unless this
4 date is stayed or extended by the undersigned or the magistrate judge by further order.

5
6 
7 U.S. District Judge Jennifer A. Dorsey
December 5, 2022

10
11
12
13
14
15
16
17
18
19
20
21
22
23